

Mental Health Series

The ADA and Alcohol Use Disorders among Physicians

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INTRODUCTION

Alcohol use disorders has been accepted as impairment for many years. While professionally considered impairment, it is not specifically defined as a disability within the Americans with Disabilities Act (ADA). Therefore, this article reviews the ADA's relationship to alcohol use disorders and its effect on physicians with such disorders.

Alcohol use disorders are comprised of alcohol abuse as well as alcohol dependence. Approximately 10 percent of women and 20 percent of men have met the diagnostic criteria for alcohol abuse while three to five percent of women and 10 percent of men have met the additional diagnostic criteria for alcohol dependence during their lifetimes.¹

In the United States workforce, approximately three percent of employees suffer from an alcohol use disorder. Employees with an alcohol use disorder are absent from work two-and-one-half times as many days as other employees. They also cost about three times more in sick leave payments than those without the disorder.²

Studies show that it is common practice for physicians, one group of healthcare providers, to drink heavily at an early stage of their careers. While estimates vary regarding physicians and alcohol use disorders, it is accepted that the work of healthcare professionals, physicians in particular, places them at an increased risk of alcohol use disorders. Physicians endure many years of medical training characterized by long hours and an excessively competitive workload. Even after graduation, few occupations experience the intense stressors that are found in the daily practice of medicine.³ However, the actual incidence or

prevalence of physician impairment from alcohol use disorders is not known.⁴

ADA AND PHYSICIANS WITH ALCOHOL USE DISORDERS

Enacted by former President George Bush, in 1992, the ADA is comprehensive in nature and "prohibits discrimination against disabled individuals in employment, public services and transportation, public accommodations and telecommunication services." Alcohol use disorders are recognized as an impairment under the ADA, however, courts have struggled to find a definitive answer on whether alcohol use disorders actually qualify as a disability under the ADA.²

In order to establish a *prima facie* case for an alcohol use disorder under the ADA, an employee must show the use "substantially limited one or more major life activities." Even with this showing, the employee is not guaranteed coverage under the ADA and is thus not protected in the employment setting. Once an employee can show that his alcohol use disorder "substantially limited one or more major life activities," on request from the employee, the employer must "reasonably accommodate" the employee. The ADA requires the employee be granted unpaid leave to participate in a rehabilitation program, but if the employee is later disciplined for misconduct related to the alcohol use disorder, the employer is under no obligation to offer the employee a "second chance at reasonable accommodation."²

Courts make distinctions between the misconduct that results from alcohol use disorders and misconduct that results from a disability. The ADA provides that an employee with an alcohol use disorder can be held to the same qualification standards for employment (job performance or

behavior) that employers hold other employees, even if their unsatisfactory performance or behavior is related to the alcohol use disorder. An employer is not required to hire or retain an individual, even with a disability, if the employee "poses a direct threat or significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation."²

In line with the ADA's current position, Tennessee passed The Workers' Compensation Reform Act in 1996. The law allows for the testing of drugs or alcohol by employers. Under this law, an employee whose alcohol test result is confirmed as positive will not, based on the result alone, be considered to have a handicap or disability as defined under federal, state or local handicap and disability discrimination laws such as the ADA. A covered employer who is in compliance with this statute and who discharges, disciplines or refuses to hire an employee is considered to have discharged, disciplined or refused to hire for cause.⁶

CASE LAW

Many cases, particularly as they relate to physicians with alcohol use disorders, have been the product of extensive litigation in the courts. In *Altaman v New York City Health and Hospitals Corp.*, a physician employee requested to return to work after successfully completing an agreed upon treatment program. The physician, who was the chief of internal medicine, had a history of an alcohol use disorder. While treating a patient, he was found to be visibly intoxicated. After successful completion of the program, the physician was not allowed to return to his practice. The court found that the physician's conduct was related to an

alcohol use disorder, but the possibility of future relapse would negatively impact the hospital's patients and staff. Thus the court held that a physician who has an alcohol use disorder could be held to the same standards as other employees, even if their unsatisfactory performance or behavior is related to the alcohol use disorder.^{6,2}

In *Goldsmith v Jackson Memorial Hospital Public Health Trust*, a physician employee argued that a history of recovery or treatment for alcohol use disorders was protected under the ADA because his history indicated that the employer knew of his treatment or regarded him as disabled as a result of his treatment. The physician, who was recovering from the alcohol use disorder and also suffered from hand tremors, had accepted a part-time position at the clinic. The clinic later rescinded the employment agreement when it determined it needed a full time physician. Goldsmith sued and argued that the clinic's actions were a result of his record of having an alcohol use disorder, thus violating the ADA. The court stated that to prove that one recovering from an alcohol use

disorder had a disability, he must offer evidence that his history of alcohol use disorder "substantially limited a major life activity." The court further stated that a record of treatment alone was not sufficient evidence to meet that requirement. As such, his claim did not fall under the provisions of the ADA.^{7,2}

CONCLUSION

Although the ADA was passed in an attempt eliminate discrimination against individuals with physical and mental impairments, Congress decided not to directly cover alcohol use disorders. Physicians suffering from an alcohol use disorder have sought protection under the ADA; however, this has led to extensive litigation with relatively unclear results. Until these areas are resolved, physicians should be aware of the limitations in being covered by the ADA for alcohol use disorders. ■

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